



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

July 25, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1916

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Brian Shreve, Repayment Investigator

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

██████████,

Defendant,

v.

Action Number: 17-BOR-1916

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ██████████, requested by the Movant on May 31, 2017. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on July 13, 2017.

The matter before the Hearing Officer arises from a request by the Department for a determination as to whether the Defendant has committed an Intentional Program Violation and thus should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve months.

At the hearing, the Department appeared by Brian Shreve, Repayment Investigator. The Defendant did not appear. The participant was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations 7 CFR §273.16
- M-2 Benefit Recovery Referral dated April 26, 2017
- M-3 Form ES-FS-5, Food Stamp (now SNAP) Claim Determination
- M-4 Case recordings from Defendant's SNAP case record, from August 17, 2016, through April 26, 2017
- M-5 Employee Wage Data screen print from WV Bureau of Employment Programs (WV BEP)
- M-6 Mail-in SNAP periodic review form, signed and dated by Defendant on January 13, 2017

- M-7 Screen print from Defendant's SNAP case record listing employment for household members
- M-8 WV Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E
- M-9 WV IMM Chapter 20, §20.6
- M-10 WV IMM Chapter 20, §20.2
- M-11 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Notice of Intent to Disqualify form, sent to Defendant on May 16, 2017

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Department's representative contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she did not report on a SNAP periodic review form that her husband had changed jobs and his earned income had increased by more than \$900 per month.
- 2) The Defendant had been a recipient of SNAP benefits since 2009 or earlier.
- 3) On January 13, 2017, the Defendant completed and submitted to the Department a SNAP periodic review form (Exhibit M-6). On this form, she reported her husband's earned income was \$2,122.65 per month, and she reported no change in her husband's employment since her previous benefit review.
- 4) On April 25, 2017, the Defendant submitted to the Department an application for Medicaid for her son. During this application, the Defendant reported that her husband had changed jobs in July 2016 and was making more money than previously had been reported.
- 5) The husband's employer who paid him \$2,122.65 per month was [REDACTED], a temporary worker staffing firm. According to the WV Bureau of Employment Programs, he began working for another employer, [REDACTED], during the third quarter of 2016 (Exhibit M-5).
- 6) The Department's representative asserted that because the Defendant did not report her husband's increased earned income from January through May 2017, her SNAP assistance group (AG) received \$1472 in benefits to which it was not entitled.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E states that it is the client's responsibility to provide information about his/her circumstances so the worker is able to make a correct decision about his/her eligibility.

WV IMM Chapter 20, §20.2 states that when an AG has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he or she should have received.

WV IMM Chapter 20, §20.2.C.2 provides that once an IPV (Intentional Program Violation) is established, a disqualification penalty is imposed on the AG members who committed the IPV. The penalties are as follows: First Offense – one-year disqualification; Second Offense – two-year disqualification; Third Offense – permanent disqualification.

WV IMM Chapter 20, §20.6.A reads as follows in part, "A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . it is not essential that an affirmative representation be made. Misrepresentation also may be the suppression of what is true, as well as the representation of what is false."

Pursuant to the Code of Federal Regulations 7 CFR §273.16, an Intentional Program Violation shall consist of a SNAP recipient having intentionally: 1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or 2. Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system or access device.

DISCUSSION

The Defendant failed to report on a SNAP periodic review form submitted in January 2017 that her husband had changed jobs and was earning significantly more money. She received SNAP benefits based on this incorrect information.

The Department's representative submitted as evidence the January 13, 2017 periodic review form (Exhibit M-6). Section 4 of this form (Exhibit M-6, page 2) is labeled "Household Earned Income." It lists the income from the Defendant's previous review, \$2,122.65, and contains a brief questionnaire asking the person who completes it if his or her income has changed more than \$100 and if anyone in the household has had a change in earnings because he or she changed, stopped or started a job. The Defendant did not respond to either of these questions.

The Department's representative also submitted as evidence an Employee Wage Data print-out from the WV Bureau of Employment Programs for the Defendant's husband (Exhibit M-5). The print-out indicates that in the quarter prior to the Defendant's SNAP periodic review, the fourth

quarter of 2016, the Appellant's husband earned \$9228.41. This amount divided by three is \$3,076.14, \$953 more than the amount listed on her periodic review form, \$2,122.65.

The Department proved by clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by not reporting her husband's job change and income increase on a SNAP periodic review form submitted in January 2017.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department provided clear and convincing evidence that the Defendant made false or misleading statements, or misrepresented, concealed or withheld facts, in order to receive SNAP benefits to which her assistance group was not entitled.
- 2) The Department presented clear and convincing evidence that the Defendant committed an Intentional Program Violation by not reporting on a SNAP periodic review her husband had changed jobs in July 2016 and began earning more than \$900 per month above his previous rate of pay, in violation of WV IMM §1.2.E and §20.6.A.
- 3) The Department must impose a disqualification penalty. The disqualification penalty for a first offense is one year.

DECISION

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation. She will be disqualified from participating in SNAP for one year, beginning September 1, 2017.

ENTERED this 25th Day of July 2017.

**Stephen M. Baisden
State Hearing Officer**